purpose. To carry out this moral obligation, he refused to sell to the defendant. Thereupon the latter employed an agent, who, by fraudulently representing that his purchase was for an unobjectionable third person, obtained a deed, and conveyed over to the defendant. The plaintiff received his own price for the property, but in spite of the absence of damage to the plaintiff, the court set aside the deed. *Brett* v. *Cooney*, 53 Atl. Rep. 729 (Conn.).

It is well settled that if in this case conveyance had not yet been made, a court of equity would have refused the defendant specific performance. *Kelly* v. *Central Pac. R. R. Co.*, 74 Cal. 557. But a reason sufficient to justify such a refusal would not necessarily be sufficient to warrant affirmative relief as in the principal case. *Cadman* v. *Horner*, 18 Ves. 10. On the contrary, the law is usually stated to be that where the plaintiff has suffered no damage, affirmative relief will be given neither at law nor in equity. See 1 BIGELOW, FRAUD 540; see also *Mahoney* v. *Whyte*, 49 Ill. App. 97.

Where there has been no damage to anyone, it is admitted that no action of any kind can lie. A plaintiff cannot sue for damages, for he has suffered none. He cannot sue to rescind and set aside the deed, for equity will not move in an idle suit: substantial interests must be involved. But where there is damage to someone, the reason of the rule in this latter case is satisfied. Given a plaintiff defrauded, an equity affecting the conscience of the defendant, and a serious injustice to be corrected, it seems a decree should issue. The fact that the person protected is a third party should make no difference. The third party must of course be without a remedy of his own. Thus relief was refused in *Dawson* v. *Graham*, 48 Ia. 378, and in *Union Bank* v. *Osborne*, 4 Humph. (Tenn.) 413. But if he is helpless, every dictate of conscience would urge a court of equity to assist the defrauded plaintiff in his efforts to relieve him. The only possible objection to so equitable a result would be some contrary claim in the defendant; but he, certainly, neither has an absolute right to retain the results of his fraud, nor deserves any tenderness at the hands of the court.

On this reasoning the principal case is believed to be sound. No decision directly against it has been found. It is authority for the proposition that though there can be no action for fraud without damage, yet in cases of rescission the damage need not always be damage to the plaintiff.

INTERCHANGE OF MAJORITY STOCK BY CORPORATIONS TO SECURE TO EACH THE CONTROL OF THE OTHER. — The exceptionally liberal policy of New Jersey toward her own corporations having the power of holding stock in other corporations seems to have suffered a modification in a recent decision of the Court of Chancery in that state. The Prudential Insurance Company of America, a New Jersey corporation, has power to "purchase" stock in other corporations "for investment." A majority of its stock is owned by its directors, several of whom are also on the board of the Fidelity Trust Company, another New Jersey corporation. An agreement was entered into by the two boards by which the Fidelity Company was to double its capital stock and turn over the entire new issue to the Prudential Company, which already owned one-third of the original stock. At the same time the directors of the Prudential Company were to sell from their holdings in that company a majority of its stock to the Fidelity Company.

The ultimate purpose was to secure to the existing directors of the Prudential Company and the successors whom they should name permanent control of its affairs. This was to be accomplished by having the annual meetings of the Prudential Company before those of the Fidelity Company, so that the board of the latter company would always be elected by the board of the former and would in turn re-elect the old directors of the former. Two minority stockholders of the Prudential Company sought to restrain their directors from carrying out the plan, and an injunction was granted. *Robotham* v. *Prudential Ins. Co. of America*, 53 Atl. Rep. 842. The main ground of the decision was that the plan was *ultra vires*, and in breach of the duty of the directors, as fiduciaries, to the minority stockholders.

It is well settled that directors are in a fiduciary relation to the stockholders, and must manage corporate affairs strictly in the interest of all. *Wardell* v. *Union Pacific R. R. Co.*, 103 U. S. 651. Any arrangement whereby the voting power is separated from the beneficial interest in the stock is obviously likely to be injurious to the interests of the other stockholders, and unless it can be shown to be for the best interests of all concerned, and not in furtherance of the plans of any faction, the arrangement is illegal and will be enjoined. *Kreissl* v. *Distilling Co. of Am.*, 61 N. J. Eq. 5. Indeed it has been held that every stockholder is entitled to the benefit of the judgment of every other stockholder in the management of the corporation. *Shepaug Voting Trust*, 60 Conn. 576. If the arrangement in the principal case had been completed, the directors of the Prudential Company need have held only enough shares to qualify. All the vices of the voting trust or pool would thus have been present, with the added feature that the scheme would have been irrevocable and self-perpetuating. There was no imputation of fraud in fact, but it is clear that the plan was mainly, if not entirely, for the benefit of the majority stockholders at the expense of the minority. As a result of it the effective voting power of the minority would have been forever lost, and the value of their shares consequently much diminished, the potentiality of control being very valuable, especially in the case of a corporation with a large surplus to be invested. It seems clear that the use of several millions of the corporate funds to effect such an arrangement was a violation of the rights of the minority stockholders, and was properly enjoined.

The court took the position that the authority to "purchase" stock conferred the right, not to subscribe for a new issue of stock, but only to buy shares already on the market. This seems to be a very narrow construction, in view of the fact that the result is precisely the same in both cases, and that it is frequently much more advantageous to acquire stock by subscription than to buy it later. No other authority seems to go to this length, although one case has been found holding that such power did not authorize subscription for stock in a corporation later to be formed. *Commercial Fire Ins. Co.* v. *Burns*, 99 Ala. 1.

It was also held, and it would seem properly so, that this use of the corporation funds was not an "investment," because the purpose was in no wise to secure from it an income.

ALTERATION OF PRINCIPAL OBLIGATION OR VARIATION OF RISK AS DEFENSE TO SURETY. — A somewhat extreme application of the doctrines regarding variation of a surety's risk is presented in a late Arkansas case.